

REMARKS

The Office Action mailed June 3, 2004, has been received and reviewed. Claims 1 through 28 are allowed. Claims 29 and 30 stand rejected. Applicant has amended claim 29 and added new claim 31, and respectfully request reconsideration of the application as amended herein.

Preliminary Amendment

Applicant's undersigned attorney notes the filing of a Preliminary Amendment on April 25, 2002, which filing was not acknowledged in the outstanding Office Action. Should the Preliminary Amendment have failed for some reason to have been entered in the Office file, Applicant's undersigned attorney will be happy to have a true copy thereof delivered to the Examiner by suitable means.

35 U.S.C. § 102(b) Anticipation Rejections

Anticipation Rejection Based on U.S. Patent No. 5,500,375 to Lee-Owen et al.

Claims 29 and 30 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Lee-Owen et al., U.S. Patent No. 5,500,375. Applicant respectfully traverses this rejection, as hereinafter set forth.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Brothers v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Applicant has amended claim 29, and respectfully traverses the rejection. Claim 29, as amended, makes it clear that the claimed apparatus includes more than a substance having immobilized thereon proteins or peptides labeled with a chromogenic substance. Rather, claim 29 now more clearly defines the specific nature of the immobilized proteins or peptides: namely, that the immobilized proteins or peptides are configured such that breakdown components labeled with a chromogenic substance are mobilized to produce a colour change when the protease substrate is reacted with protease found in a dust sample.

With regard to the cited reference, there is a significant structural difference between the arrangement disclosed therein and that defined in amended claim 29. The immunochromatographic assay device disclosed in the reference contains a “mobilized labeled reagent and a detection zone for detecting the labeled reagent” (col. 5, lines 60 through 66). As used in the reference, the term “labeled reagent” refers to a labeled receptor specific to the analyte of interest, and the term “mobilizable” means that the reagent will move *along the solid face support* with the liquid sample to a detection zone. In contrast, the substrate of the present invention as claimed makes use of a labeled reagent, namely the recited proteins or peptides labeled with a chromogenic substance, which are initially immobile.

The Examiner has referred to the “sandwich immunoassay format” described in col. 6, lines 11 to 17 of the reference. The described arrangement uses two receptors, the first being the mobile labeled reagent and the other being immobilized in the detection zone. The sole purpose of the latter receptor, that in the detection zone, is simply to immobilize the analyte (together with any formally mobile labeled reagent attached thereto) in the detection zone. In contrast, the structure of the apparatus of claim 29 as claimed is configured to result in the release of the “labeled reagent” (chromogenic substance) once exposed to the analyte, *i.e.*, the antithesis of the teachings of the reference.

Withdrawal of the rejection of claim 29 is respectfully requested.

Claim 30 is allowable at least as depending from claim 29 as presently amended.

Allowable Subject Matter

Claims 1 through 28 are allowed. Applicant notes with appreciation the indication of allowable subject matter.

New Claim 31

New claim 31 has been added to further and more fully define the present invention. Support for claim 31 lies at least in page 8, lines 5 through 10, of the specification hereof as filed.

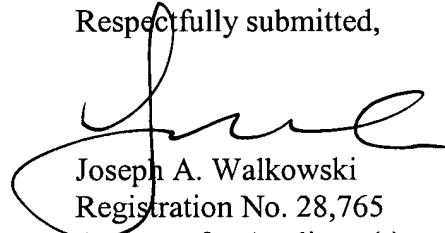
ENTRY OF AMENDMENTS

The amendments to claim 29 and new claim 31 above should be entered by the Examiner because the amendments are supported by the as-filed specification and drawings and do not add any new matter to the application.

CONCLUSION

Claims 1 through 31 are believed to be in condition for allowance, and an early notice thereof is respectfully solicited. Should the Examiner determine that additional issues remain which might be resolved by a telephone conference, she is respectfully invited to contact Applicant's undersigned attorney.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Joe', is written over the printed name and title of the attorney.

Joseph A. Walkowski
Registration No. 28,765
Attorney for Applicant(s)
TRASKBRITT
P.O. Box 2550
Salt Lake City, Utah 84110-2550
Telephone: 801-532-1922

Date: October 4, 2004
JAW/sls:ljb
Document in ProLaw